



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 25, 2005

Ms. Julia Vaughan
Executive Director
Board of Law Examiners
P.O. Box 13486
Austin, Texas 78711-3486

OR2005-02556

Dear Ms. Vaughan:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 221055.

The Board of Law Examiners (the "BLE") received a request for information pertaining to the requestor's client and the July 2004 Texas bar exam. You state that the BLE has provided some of the requested information to the requestor, and that the BLE does not have documentation responsive to some of the information requested.¹ However, you claim that the requested examinee responses are not subject to the Act, and in the alternative, are excepted from public disclosure under the Act pursuant to section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.²

¹The Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); see also Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

²We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

In Open Records Letter No. 92-267 (1992), this office addressed whether bar exam scores held by the BLE are subject to the Act. In that ruling, we noted that section 82.003 of the Government Code generally provides that the BLE is subject to the Act. However, we also noted that section 82.003(b) provides that “[e]xamination questions that may be used in the future and examinations other than the one taken by the person requesting it are exempt from disclosure.” Gov’t Code § 82.003(b). In an order issued on July 7, 1987, the Texas Supreme Court clarified section 82.003 by exempting from disclosure under the Act “[g]rades and examination results of any person.”³ *Order of the Supreme Court of Texas* (Tex. July 7, 1987) (on file with the Open Records Division of the Office of the Attorney General). Therefore, in Open Records Letter No. 92-267 (1992), this office held that any information coming under section 82.003(b) or the exemptions listed in the Supreme Court’s July 7, 1987 order was not subject to the Act and the BLE need not seek a ruling from this office regarding whether it must release such information. Nevertheless, we went on to find that the bar examination results requested in that request were exempt from disclosure under section 82.003(b) of the Government Code and could be withheld from the requestor. We further found that the BLE could withhold bar examination results from future requestors without seeking a ruling from this office.

You indicate, and the documents reflect, that the submitted information constitutes examination responses of the requestor’s client. Upon review of your assertions and the submitted information, we agree that this information is subject to section 82.003(b) of the Government Code and the July 7, 1987 order of the Supreme Court. Therefore, the submitted information is not subject to the Act, and need not be released to the requestor. Based on this finding, we need not reach your argument under section 552.101 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

³ An applicant may request his or her own grades under the supreme court’s order, but the grades may be withheld pending the resolution of an investigation into the applicant’s moral character and fitness.


If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,


Marc A. Barenblat
Assistant Attorney General
Open Records Division

MAB/jev

Ref: ID# 221055

Enc. Submitted documents

c: Mr. Kevin R. Michaels
Attorney at Law
11767 Katy Freeway, Suite 730
Houston, Texas 77079
(w/o enclosures)